

d. Other. Please explain:

19. For which of the following reasons do you support firearm ownership for law-abiding Montana citizens (please mark any and all that apply)?

- a. X Constitutional Right.
- b. X Hunting.
- c. X Competitive shooting.
- d. X Informal sport shooting (e.g., plinking).
- e. X Defense of self, family, and home (basic human right).
- f. X Collecting.
- g. X Defense of state and nation.
- h. X All of the above.
- i. None of the above.

20. Have you ever run for or held state or local elective office?

- a. Yes. Please specify:
- b. X No.

21. Are you a member of the National Rifle Association, the Montana Shooting Sports Association, the Montana Rifle & Pistol Association or any other shooting/sportsmen's/gun rights organization?

- a. Yes. Please specify:
- b. X No.

I have previously been a member of the NRA, but am not currently a member. I don't want to risk recusal if a lawsuit came before me where the NRA was involved.

—Please see the information from the email sent to Brian Judy on Sept. 16, 2014.

—Please also see the attached article from the Great Falls Tribune dated 9/18/14. The emails referenced in the article, which are available at the website, are very illuminating regarding my defense of the 2nd Amendment while serving as Montana's Solicitor General. See especially page 93.

Candidate Signature: Lawrence VanDyke  
Date: 9/18/14

AMERICAN BAR ASSOCIATION,  
October 29, 2019.

Re Nomination of Lawrence J.C. VanDyke to the United States Court of Appeals for the Ninth Circuit.

Hon. LINDSEY GRAHAM,  
*Chairman, Committee on the Judiciary,*  
*U.S. Senate, Washington, DC.*

Hon. DIANNE FEINSTEIN,  
*Ranking Member, Committee on the Judiciary,*  
*U.S. Senate, Washington, DC.*

DEAR CHAIRMAN GRAHAM AND RANKING MEMBER FEINSTEIN: The American Bar Association's Standing Committee on the Federal Judiciary has received a full report on Lawrence J.C. VanDyke and a supplemental review by a former chair of the Committee. The Committee's work is based solely on a review of integrity, professional competence, and judicial temperament. Based on these criteria, a substantial majority of the Committee has determined that Mr. VanDyke is "Not Qualified," and a minority determined that he is "Qualified" to serve on the United States Court of Appeals for the Ninth Circuit. The majority rating represents the Standing Committee's official rating. I write to offer a brief explanation of this rating.

The evaluator's Formal Report is based on 60 interviews with a representative cross section of lawyers (43), judges (16), and one other person who have worked with the nominee in the four states where he has worked and who are in a position to assess his professional qualifications. They include but are not limited to attorneys who worked with him and who opposed him in cases and judges before whom he has appeared at oral argument. The evaluator obtained detailed background materials such as more than 600 pages of publicly produced emails involving and/or written by Mr. VanDyke, news reports where Mr. VanDyke had been interviewed, and articles and opinions written about him.

Mr. VanDyke is a highly educated lawyer with nearly 14 years of experience in appellate law, including one year as a law clerk, an associate in a law firm, and as a Solicitor General for over five-plus years, first in Montana and then Nevada, two states in the Ninth Circuit where he would serve if confirmed. The Committee was tasked with balancing Mr. VanDyke's accomplishments with strong evidence that supports a "Not Qualified" rating.

Mr. VanDyke's accomplishments are offset by the assessments of interviewees that Mr. VanDyke is arrogant, lazy, an ideologue, and lacking in knowledge of the day-to-day practice including procedural rules. There was a theme that the nominee lacks humility, has an "entitlement" temperament, does not have an open mind, and does not always have a commitment to being candid and truthful.

Some interviewees raised concerns about whether Mr. VanDyke would be fair to persons who are gay, lesbian, or otherwise part of the LGBTQ community. Mr. VanDyke would not say affirmatively that he would be fair to any litigant before him, notably members of the LGBTQ community.

Even though Mr. VanDyke is clearly smart, comments were made that in some oral arguments he missed issues fundamental to the analysis of the case. There were reports that his preparation and performance were lacking in some cases in which he did not have a particular personal or political interest.

While the evaluator was careful in her interview with Mr. VanDyke not to name interviewees, the nature of the issues that gave rise to some of the negative comments had been publicly discussed and other adverse comments could be raised without identifying interviewees. The negative issues discussed in this letter were thoroughly discussed with interviewees and vetted with the nominee. Significantly, the interviewees' views, negative or positive, appeared strongly held on this nominee.

The Committee's work is guided by the Backgrounder which reflects that judgment is a component of professional competence, and that open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under law are components of judicial temperament. Based on these principles, a substantial majority of the Committee determined that the nominee is "Not Qualified" to be a Ninth Circuit judge.

Very truly yours,

WILLIAM C. HUBBARD.

Mr. VAN HOLLEN. Mr. President, yesterday, I went to the Senate floor to ask unanimous consent on the DETER Act, bipartisan legislation that I authored alongside Senator RUBIO that is languishing in the Senate legislative graveyard.

The DETER Act is absolutely critical to protect our democracy from foreign interference. It serves a clear, simple, and essential purpose. It says to Russia and any other foreign power that, if they interfere in our elections and undermine the integrity of our democracy, they will face severe consequences in the form of tough sanctions. Foreign interference in our elections remains as critical a threat as ever. That is why, on November 5, seven U.S. Federal agencies jointly stated, "Russia, China, Iran, and other foreign malicious actors all will seek to interfere in the voting process or influence voter perceptions. Adversaries may try to accomplish their goals

through a variety of means, including social media campaigns, directing disinformation operations, or conducting disruptive or destructive cyberattacks on state and local infrastructure."

The Senate endorsed the inclusion of this bill in this year's National Defense Authorization Act, unanimously passing a resolution in the fall instructing NDAA conferees to include such a provision in the conference report. However, the Republican leadership has stonewalled the inclusion of this bill in the NDAA. Instead, we are voting this week on two Ninth Circuit judicial nominees of dubious qualifications, including one who was rated "Unqualified" by the American Bar Association, ABA.

Circuit courts play an important role in our country. Circuit court judges review the decisions of district court judges. Instead of nominating experienced jurists, Republicans have chosen to advance two nominees, Messrs. Bumatay and VanDyke, neither of whom have absolutely any experience as judges, at the State or Federal level. Mr. VanDyke was harshly described by his peers and colleagues as someone who is "arrogant and disrespectful to others, both in and outside of this office. He avoids work. He does not have the skills to perform, nor desire to learn how to perform, the work of a lawyer." This harsh criticism of a judicial nominee from their peers is extremely rare and factored in heavily into the ABA's "Unqualified" rating.

Instead of trying to confirm unqualified radical ideologues to the bench, Republicans should be working across the aisle to pass bipartisan legislation to secure our elections and address other national priorities. Failing to do so is a dereliction of our duty.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. BARRASSO. Mr. President, I ask unanimous consent that the rollcall vote scheduled to begin at 4:15 begin at 4:05 p.m., immediately.

The PRESIDING OFFICER. Without objection, it is so ordered.

VOTE ON VANDYKE NOMINATION

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the VanDyke nomination?

Mr. BARRASSO. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. THUNE. The following Senator is necessarily absent: the Senator from Kentucky (Mr. PAUL).

Mr. DURBIN. I announce that the Senator from Colorado (Mr. BENNET), the Senator from New Jersey (Mr. BOOKER), the Senator from Vermont (Mr. SANDERS), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 44, as follows:

[Rollcall Vote No. 391 Ex.]

#### YEAS—51

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeben	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Isakson	Scott (FL)
Cornyn	Johnson	Scott (SC)
Cotton	Kennedy	Shelby
Cramer	Lankford	Sullivan
Crapo	Lee	Thune
Cruz	McConnell	Tillis
Daines	McSally	Toomey
Enzi	Moran	Wicker
Ernst	Murkowski	Young

#### NAYS—44

Baldwin	Hassan	Reed
Blumenthal	Heinrich	Rosen
Brown	Hirono	Schatz
Cantwell	Jones	Schumer
Cardin	Kaine	Shaheen
Carper	King	Sinema
Casey	Klobuchar	Smith
Collins	Leahy	Stabenow
Coons	Manchin	Tester
Cortez Masto	Markey	Udall
Duckworth	Menendez	Van Hollen
Durbin	Merkley	Warner
Feinstein	Murphy	Whitehouse
Gillibrand	Murray	Wyden
Harris	Peters	

#### NOT VOTING—5

Bennet	Paul	Warren
Booker	Sanders	

The nomination was confirmed.

The ACTING PRESIDENT pro tempore. Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

#### CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of John Joseph Sullivan, of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Russian Federation.

Mitch McConnell, Thom Tillis, Richard Burr, Pat Roberts, John Cornyn, John Hoeven, Cindy Hyde-Smith, Roger F. Wicker, Marco Rubio, John Boozman, James E. Risch, John Barrasso, John Thune, Roy Blunt, Lamar Alexander, Mike Braun, Shelley Moore Capito.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of John Joseph Sullivan, of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Russian Federation, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. THUNE. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR) and the Senator from Kentucky (Mr. PAUL).

Mr. DURBIN. I announce that the Senator from Colorado (Mr. BENNET), the Senator from New Jersey (Mr. BOOKER), the Senator from Vermont (Mr. SANDERS), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

The PRESIDING OFFICER (Mr. CRAMER). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted — yeas 69, nays 25, as follows:

[Rollcall Vote No. 392 Ex.]

#### YEAS—69

Alexander	Gardner	Murphy
Barrasso	Graham	Perdue
Blackburn	Grassley	Portman
Blunt	Hassan	Risch
Boozman	Hawley	Roberts
Braun	Hoeben	Romney
Capito	Hyde-Smith	Rosen
Cardin	Inhofe	Rounds
Carper	Isakson	Rubio
Cassidy	Johnson	Sasse
Collins	Jones	Scott (FL)
Coons	Kaine	Scott (SC)
Cornyn	Kennedy	Shaheen
Cortez Masto	King	Shelby
Cotton	Lankford	Sinema
Cramer	Leahy	Sullivan
Crapo	Lee	Tester
Cruz	Manchin	Thune
Daines	McConnell	Tillis
Enzi	McSally	Toomey
Ernst	Merkley	Van Hollen
Feinstein	Moran	Wicker
Fischer	Murkowski	Young

#### NAYS—25

Baldwin	Heinrich	Schumer
Blumenthal	Hirono	Smith
Brown	Klobuchar	Stabenow
Cantwell	Markey	Udall
Casey	Menendez	Warner
Duckworth	Murray	Whitehouse
Durbin	Peters	Wyden
Gillibrand	Reed	
Harris	Schatz	

#### NOT VOTING—6

Bennet	Burr	Sanders
Booker	Paul	Warren

The PRESIDING OFFICER. On this vote, the yeas are 69, the nays are 25.

The motion is agreed to.

The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that there be 2 minutes of debate equally divided between the Senator from Washington and myself and that there be 2 minutes of debate equally divided between the two leaders prior to the following vote. I further ask that the remaining votes in this series be 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington.

#### NOMINATION OF STEPHEN HAHN

Mrs. MURRAY. Mr. President, the Food and Drug Administration plays an important part in our families' everyday lives. When people across the country do anything from using a medical device, to getting a prescription filled, to sitting down together to eat,

they rely on the FDA to keep them safe and healthy.

There is a lot at stake for our families, and it is critical that we know the FDA's leadership will uphold its gold standard of safety and effectiveness and put people's health and well-being first. I am not convinced that is the case under Hahn's leadership.

I have reviewed his records and carefully considered his answers on key issues. I want the Senate to know I was particularly concerned by his evasive response when it came to how to address skyrocketing youth e-cigarette use. Just a few months ago, the Trump administration promised it would take action and pull non-tobacco-flavored e-cigarette products from the market until after the FDA had reviewed them, only to reverse its course.

We need a leader at the FDA who will fight for our families and stand up to this administration on this important policy. When Members from both sides of the aisle asked him about this, he refused to commit to follow through on the promising step President Trump decided to abandon. So given his answers—or lack thereof, really—on this concerning issue, I am voting no on this confirmation.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. We have a vacancy at the Food and Drug Administration. So what if someone said: Wouldn't it be a good idea to go see if we can recruit the chief medical officer at the MD Anderson Cancer Center in Houston, one of the most distinguished institutions in the world, an organization that is even larger than the FDA? Wouldn't it be a good idea to go get a practicing oncologist? Wouldn't it be a good idea to get somebody who has worked at the National Institutes of Health and who has letters of recommendation from more than 80 organizations? Wouldn't it be a good idea to get someone who has been recommended and endorsed by the last five FDA Commissioners, under Presidents Trump, Obama, and Bush?

Well, we have such a person. That person came out of our committee 18 to 5—Dr. Stephen Hahn, the Chief Medical Officer of the MD Anderson Cancer Center. We should be grateful he is willing to take this job at this period of time.

I urge a "yes" vote, Mr. President.

#### CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Stephen Hahn, of Texas, to be Commissioner of Food and Drugs, Department of Health and Human Services.